Policing Alberta

A Discussion Paper

Alberta
JUSTICE

October 2000

Introduction

Purpose

The Honourable Dave Hancock, Q.C., Minister of Justice and Attorney General, has appointed Ms. Judy Gordon, MLA Lacombe-Stettler, to chair an MLA committee to conduct a public review of policing in Alberta, including a review of the *Police Act*. Other committee members are Ms. Heather Forsyth, MLA Calgary-Fish Creek and Mr. Wayne Jacques, MLA Grande Prairie-Wapiti. The committee will initiate this review by seeking responses to a discussion paper. This paper will be forwarded to those most immediately involved in policing issues and will be made available to the general public.

The paper is intended to provide a framework for discussion of policing in Alberta generally and the *Police Act* in particular. It will provide background on the current state of policing in Alberta and will then outline a variety of issues regarding policing that have been raised over the past decade. Strategic issues will be dealt with first, followed by specific legislative issues that have been brought forward. The paper also includes an appendix providing background on Special Constables. The suggestions to resolve these issues do not represent a plan or direction, but are meant as starting points for discussion. The review committee is not limiting itself to the approaches discussed in this paper, but is seeking alternative and, hopefully, consensual solutions to issues.

Responding to this Paper

Respondents should work with a copy of the *Police Act* at hand. This paper refers to various sections of the Act but will not usually quote them; they will be referenced by indicating the relevant part or section of the Act in parentheses. A copy of the Act can be purchased from the Queen's Printer or viewed free online at http://www.gov.ab.ca/qp/. In addition, most public libraries have copies of legislation in the reference section. The *RCMP Act* can be viewed online at the Federal Department of Justice site at http://canada.justice.gc.ca/Loireg/index_en.html.

There are several ways to respond to this paper. You can answer the direct questions that are asked in many places in this paper, you can discuss the pros and cons of suggested approaches that are presented, or you can suggest approaches that have not yet been put forward. Referring to the questions by their numbers will aid the MLA committee in summarizing responses.

Providing a rationale for suggestions and positions will also assist the review committee immensely in deciding what directions to take. It is likewise important to clarify the principles and assumptions that your responses are based on.

Please forward your responses before December 15, 2000, to:

Ms. Judy Gordon, MLA
Chair, Policing in Alberta Review Committee
c/o Public Security Division, Alberta Justice
10th Floor, Brownlee Building
10365 – 97 Street
Edmonton, Alberta T5J 3W7

For further information contact the Public Security Division of Alberta Justice at (780) 427-3457 (dial 310-0000 to be connected toll-free) or by e-mail at policing.alberta@gov.ab.ca.

Terminology

This paper uses a number of terms that may be somewhat confusing to those not familiar with the police legislation environment:

- **"Overseeing":** refers to the role of police "watchdog" agencies to oversee police without actually governing or supervising them. This role is similar to that of auditors.

- **"Agreements":** refers to the agreements or contracts between different levels of government that provide for policing arrangements. These include the agreements between Alberta and Canada for the Provincial RCMP, between municipalities and Canada for municipal RCMP and the "tri-partite agreements" between First Nations, Alberta and Canada that form the basis for First Nations Policing.

- **"Provincial Police":** refers to the policing done by the RCMP on behalf of the province under the terms of the Provincial Police Service Agreement. This includes policing rural areas of Alberta as well as highway patrols and specialized services such as dogs, identification, major crimes, and aircraft.

- **"Municipal Agreement" or "Municipal RCMP":** refers to policing done by the RCMP under an agreement with a municipality that must provide its own policing. In many locations, a municipal RCMP unit will share a building with a Provincial RCMP unit, giving the impression of being one police unit but actually operating with different staffing and responsibilities.

- **"Municipal Police":** refers to those cities and towns that have chosen to operate their own municipal police service, overseen by a local, municipal police commission.

Overview of Current Policing and the *Police Act*

This overview is intended to provide a general description of policing as it currently exists in Alberta along with the main components of the *Police Act*. It does not describe the processes or administration specified in the legislation and does not identify minor matters.

The Alberta *Police Act* does not deal with the RCMP other than to allow the province to enter into an agreement with the federal government for the services of the RCMP. The RCMP are governed by federal legislation and by the terms of the Provincial Police Service Agreement and Municipal Policing Agreements.

History

The current *Police Act* came into effect in 1988, following extensive consultations. The new Act did not drastically alter policing but did make a number of substantial changes, the main ones being:

- Changing the Law Enforcement Appeal Board to the Law Enforcement Review Board. This provided a mechanism allowing a civilian agency to oversee police behaviour, complaint handling and discipline (Part 2).
- Simplifying the complaint handling and disciplinary process (Part 5).
- Raising the population threshold where a city, town, or village is required to provide their own policing, from 1,500 to 2,500 (s.4).
- Allowing the minister to exempt an area of the province from the provisions of the Act and to make alternate arrangements. This provided a mechanism for the development of First Nations police services (s.5).
- Allowing the formation of regional police services (s.24).
- Specifying the role and responsibility of municipal police commissions to provide general supervision of the police, and the distribution of powers between the municipal government, the police commission and the chief of police (Part 3).
- Establishing requirements for indemnification of police officers and clarifying issues of liability (s.39, 40).

Responsibility to Provide Policing

Under the Canadian Constitution, the province is responsible for the administration of justice. The *Police Act* reiterates that the Government of Alberta is responsible for ensuring that an adequate and effective level of policing is maintained throughout Alberta (s.3). The Act permits

the Lieutenant Governor in Council to enter into an agreement with the federal government for the RCMP to provide a provincial police service (s.21).

The Act delegates responsibility for policing of larger urban centres to those municipalities. It specifies that all cities, towns, villages and summer villages with a population of 2,500 or greater must provide their own policing. The province is responsible for providing the policing for the remainder of the province, although rural municipalities may choose to provide their own policing (s.4).

How to Provide Policing

Municipalities have several options as to how to provide policing:

- Establish an independent municipal police service, governed by a police commission appointed by the municipal council. Currently, there are eight cities and towns with this type of policing.
- Enter into an agreement for service by an existing police service (e.g. RCMP). Most municipalities in Alberta are policed in this manner. One municipality did contract with a neighbouring municipality for several years, but has since changed to an agreement for RCMP services.
- Establish a regional police service (s.4). There have been none formed to date by municipalities in Alberta. (Some First Nation Police Services use a regional model, serving a number of First Nations communities. These are structured under the various Tri-Partite Agreements, and not by the *Police Act* itself.)

The Act requires the approval of the minister before a municipality can enter into or withdraw from an agreement (s.22) or withdraw from providing its own police (s.27).

Overseeing Police – the role of the Province

The Act establishes two separate provincial entities to oversee police: the Director of Law Enforcement and the Law Enforcement Review Board (LERB). The Act requires the establishment of the LERB while the appointment of a Director of Law Enforcement is at the minister's discretion. The Assistant Deputy Minister for the Public Security Division, Alberta Justice is the Director of Law Enforcement.

The Director of Law Enforcement's main responsibilities are (s.8):

- monitoring police services to ensure that adequate and effective policing is maintained,

- developing and promoting crime prevention programs,
- developing and promoting training and performance standards,
- assisting in the coordination of policing services,
- assisting and advising municipal governments and commissions.

The Act allows the minister to intervene in a municipality where, in the opinion of the minister, the policing is not adequate or is not in compliance with the *Police Act* (s.30). This has not taken place under the current Act.

The Law Enforcement Review Board's main responsibilities are (s.17):

- to act as an appeal mechanism for public complainants concerning the disposition of a complaint,
- to act as an appeal mechanism for police officers concerning disciplinary action taken against them.

In addition, the board may, on its own motion, conduct inquiries respecting complaints and shall, at the request of the minister, conduct inquiries in respect of any matter respecting policing. To date, the main focus of the board has been in the area of appeals. However, the board has been proactive in advising police of potential problems and solutions from a public perspective. Because the RCMP are governed by federal legislation, the LERB's role is restricted to the arena of municipal policing.

The Provincial Police Service Agreement defines the role of the province in overseeing the RCMP as the provincial police in Alberta. The federal government is responsible for directly supervising or managing the RCMP under the *RCMP Act,* while, under the agreement, the provincial minister, in cooperation with the RCMP "K" Division Assistant Commissioner, establishes provincial policing objectives, priorities and goals. The Public Security Division of Alberta Justice is responsible for the administration of the agreement.

The RCMP Public Complaints Commission and the RCMP External Review Committee, established by the *RCMP Act*, serve a function similar to the Law Enforcement Review Board.

Overseeing Police – the role of the Municipality

Where a municipal police service is formed, it is under the general supervision of a police commission that is appointed by the municipal council (s.27). The commission may include council members, but they must be in the minority and cannot act as chairman (s.28). The commission's responsibilities include:

- developing a budget and yearly plan (s.29)
- allocating the budgeted funds (s.31)
- setting policies to provide for efficient and effective policing (s.31)
- issuing instructions to the chief of police in relation to the policies (s.31)
- general supervision of the chief of police (s.41)

The commission may issue instructions only to the chief of police, not to any other police officer, and those instructions must not infringe on the chief's responsibility for the day-to-day administration of the police service (s.31 and 41). The municipal council's role is limited to establishing the police service's total budget and to ratifying the commission's appointment of a chief of police (s.29 and 36).

Municipalities with RCMP agreements operate in the same way the province does in regards to the Provincial Police Service Agreement. The chief executive officer of the municipality, in consultation with the local commander, establishes the policing objectives, priorities and goals. The *Police Act* allows a municipality to establish a policing committee to oversee the agreement and to represent the interests of the council to the police officer in charge (s.23).

Complaints and Discipline

All complaints about a municipal police service or police officers are directed to the chief of police. The chief decides if it is a complaint about policies or services or about officer conduct (s.43).

If the complaint concerns policies or services, the chief can either act on it or refer it to the commission. The complainant must be notified of the disposition of the complaint. The complainant may appeal the disposition to the commission (s.44).

If the complaint concerns officer conduct, the chief of police must have it investigated. If it appears that an officer may have contravened the code of conduct specified in the *Police Service Regulation*, a disciplinary hearing can be held. Again, the complainant must be advised in writing of the disposition of the complaint and of their right to appeal to the Law Enforcement Review Board (s.45, 47 and 48).

If a complaint concerns the chief of police, the process is similar, except that the complaint goes to the chairman of the police commission, who will request the Minister of Justice to direct another police service to investigate.

Complaints and discipline concerning the RCMP are controlled by the *RCMP Act*. The process is similar to that for municipal police. All complaints are initially investigated by the RCMP. The complainant has a right to appeal to the RCMP Public Complaints Commission, an independent civilian review body, if the complainant is not satisfied with the RCMP's handling of the complaint. Appeals by RCMP officers concerning discipline go to the RCMP External Review Committee.

Exemptions and First Nations Policing

Because First Nation Reserves are under federal jurisdiction, only provincial laws of "general applicability" apply to reserves. This means that only provincial laws that apply to all Alberta, apply to First Nations; the province cannot pass legislation that specifically applies to First Nations. Thus, First Nations' policing matters are dealt with under a section that allows the minister to exempt any portion of the province from the Act and to make other arrangements (s.5). The structure and governance of First Nations' Police Services is dictated by "Tri-partite Policing Agreements" between the First Nation, the province and the federal government. These agreements contain provisions and procedures similar to those contained in the *Police Act* and the *Police Service Regulation*.

Strategic Policing Issues

There are a number of strategic issues concerning policing that have arisen over the past decade. Many of these will be reflected by specific legislative issues that are presented in the following section. Others are of a more general nature that still require thought and discussion before they can be considered for proposed legislation.

A. How can provincial responsibility for adequate and effective policing be accomplished?

Under the Canadian Constitution, provinces are responsible for the administration of justice. Even though the *Police Act* delegates much of this responsibility to municipalities, the ultimate responsibility lies with the province. Different communities have widely differing policing needs that are best determined locally. How can the varying policing needs of municipalities be balanced with the province's overall responsibility for ensuring that adequate and effective policing is maintained throughout Alberta?

1. ***Is the present system of delegated responsibility to cities and towns over 2,500 population effective and equitable?***

2. ***Should regional police services be encouraged?***

3. ***Should there be one police service for the province, administered by the province (i.e. a provincial service)?***

4. ***How much control should the province exert over municipal, regional, First Nations police and their police commissions?***

5. ***How should the province exert control? What role should the Director of Law Enforcement, and the Law Enforcement Review Board play? Is there a role for a provincial police commission?***

While the Minister of Justice is responsible for policing in Alberta, there are a wide variety of specialized law enforcement responsibilities and roles that are performed by other government departments (e.g. enforcement of the *Wildlife Act* and the *Gaming and Liquor Act*). Along with

the advantages of separate specialized law enforcement is the danger of lack of coordination, accountability to the Minister of Justice, and potential conflicting enforcement objectives. For example, it has been suggested that the Department of Infrastructure take on a major role in enforcing traffic laws with commercial carriers.

Police assistance grants should also be considered in this context. Until 1994, a Municipal Police Assistance Grant was administered by the Solicitor General, who was then responsible for policing. In that year, the funds were transferred to Alberta Municipal Affairs to become part of unconditional grants to municipalities.

6. ***Should a single entity or department be responsible for all law enforcement responsibilities including traffic enforcement, specialized enforcement and police assistance grants?***

There are also wide ranging "non-enforcement" demands on police, coming from a variety of governmental agencies; for example, school programs, crime prevention, and traffic safety initiatives all make demands on police resources.

7. ***How can the varying "non-enforcement" demands on police be effectively and efficiently managed?***

B. How can the balance between political control of police and police independence be maintained to ensure that police are fully accountable, yet able to operate without political or other partisan interference?

The delicate balance between police accountability and independence from political influence is a vital issue in a democratic society. In Alberta, the police commissions are supposed to act as buffers between the police and the elected officials. As well, the Law Enforcement Review Board provides independent civilian review of public complaints and police discipline.

8. ***Is the present system of police commissions, public complaint handling, and review by the Law Enforcement Review Board working in the public interest?***

9. ***How can police be held accountable to the public without impairing their essential independence from political interference?***

10. Is the present amount of control exerted by the provincial government (or the municipal governments) over police operations and investigations appropriate?

11. Should the provincial government or police commissions be more involved in setting operational procedures for police; for example, defining conditions allowing for the use of deadly force?

12. Are police commissions, as they are presently structured, appointed, and trained, able to provide adequate general supervision of police?

13. Is the current system of volunteer, part-time police commission members appropriate for generally supervising large metropolitan police services?

C. What alternatives are available to enforce laws and provide for safe communities?

Policing is complex and expensive. How to effectively and efficiently deliver the wide variety of services usually expected of police is a continuing quest. For example, one of the aims of "community policing" is to involve the local community in working together with the police to increase community safety. It has also been suggested that not all functions traditionally performed by police require a fully trained police officer. For example, the RCMP and some other police services use volunteer auxiliary constables to assist police officers. Many agencies use special constables for specialized law enforcement duties (see Appendix A outlining the current special constable program). As well, volunteers are used extensively by Victim Service units throughout the province to provide support and guidance to victims of crime.

14. What alternative or innovative methods might be available to enhance effective and efficient law enforcement and to provide for "safe communities"?

15. Where and how can special constables, cadets, auxiliaries, and volunteers play a role?

The relationship of the private security industry to policing and public safety is an emerging issue. The private sector can provide relatively inexpensive manpower for some roles and can provide highly specialized expertise for other roles. However, there is a fundamental difference that must be considered: a police officer's loyalty and duty is to the Crown and the law, whereas a security guard's or private investigator's duty is to the employer.

16. Does the private security industry have a role in law enforcement and public safety? If so, how can potential conflicts of interest, accountability and standards of competency be addressed?

D. How can police be ensured of adequate resources, without compromising the public interest?

Policing is very expensive and takes a large portion of a municipality's budget. Presently, rural municipalities are policed by the province, while urban municipalities pay for policing. Municipalities have, over the years, depended on fine revenue to offset the costs of policing. With the advent of photo radar, this has come under some attack. As well, some police services and police officer associations elsewhere in Canada have tried to raise funds independently of their governing body (commission or municipal government). This has produced concerns about accountability and potential conflicts of interest.

17. How can police services increase efficiency?

18. How can financial responsibility for policing be made more equitable?

19. Should the municipality and/or police be allowed to generate and keep fine revenues?

20. How seriously would independent fund raising by police services or police officer associations interfere with the requisite neutrality and objectivity of police?

E. Is the relationship between the province and the RCMP working in the best public interest?

The RCMP has a long history of policing Alberta under a contractual relationship between the province and Canada. The present Provincial Police Service Agreement was signed in 1992 for a 20-year period, expiring in 2012. Negotiations for the renewal of the agreement will involve eight provinces, three territories, and the federal government. This process will be quite complex and lengthy. Discussions among provinces seeking a common stand will likely commence about 2007 or 2008. Some concern has been expressed that the province does not have adequate control or influence over the RCMP. The role of the province in overseeing the provincial

RCMP is defined by the Provincial Police Service Agreement, the federal *RCMP Act*, and the common law independence of police.

21. ***Is the contractual relationship with Canada for RCMP services working in Alberta's best interests? What issues should be brought forward when contract negotiations commence as we approach 2012?***

22. ***Should the province exert more control or influence over the RCMP? In what areas and how?***

Police Legislation Issues

The following section of the discussion paper deals with more specific details related to the legislation governing policing. It presents the various proposals and suggestions for changes to the legislation that have been put forward over the decade that the current Act has been in operation. Some of the issues addressed in the Strategic Issues section of this paper will appear here also. These are addressed in this section in a more specific and detailed manner, focusing on the legislative changes proposed.

This section has been organized into themes for ease of reference. You will find that the themes are not exclusive and any given issue could relate to or affect an issue in another category.

Responsibility for Policing

Over recent decades, there has been considerable growth in rural areas adjacent to cities and towns, particularly in the form of acreage and industrial developments. It has been argued that these high-density rural areas have the resources to provide their own policing and there is no justification for the province to provide policing for them at no cost while urban municipalities have to pay for their own policing.

Another issue that has arisen is that the *Municipal Government Act* has created a type of municipality not covered by the *Police Act*: specialized municipalities such as Wood Buffalo and Strathcona. A related matter is where a city or town unincorporates and becomes part of the rural municipality, as in the case of Drumheller. Thus far, these cases have been dealt with in the specific legislation creating them.

Some suggestions have been put forward to rationalize policing responsibility:

- The province continue to provide policing to rural and small urban municipalities, but charge the municipality a fee based on the population. Larger rural municipalities would have the option of forming their own (or a regional) police service.

- The province continue to provide policing at no charge to rural and small urban municipalities and provide a grant to municipalities that provide their own policing. The grant could be based on the savings to the province by not providing policing to that area.

- Require all municipalities to provide their own policing (either by an RCMP agreement or an independent police service). Small towns or villages would be expected to be part of a regional police service or contract involving their surrounding rural municipality. Larger towns or cities could have the option of providing their own policing or taking part in the regional policing arrangement. A provincial police service would be retained to provide specialized services such as special investigations/major crimes, intelligence, air services, communications networks, dog service, tactical response teams, etc.

23. Should counties and municipal districts continue to be policed by the province or should they provide their own policing?

24. Should there be a population threshold where a municipality must provide its own policing? If so, what should the threshold be? Is there an alternative to using population (such as total property assessment)?

Policing of highways is another issue that has been raised. There are a variety of agencies now enforcing traffic laws on highways: police, municipal special constables, and special constables from other provincial government departments, primarily transport officers of Alberta Infrastructure. Concern has been expressed that this situation may lead to divergent goals, inconsistent enforcement practices and duplication of resources. In a related issue, a number of First Nations police services have requested authority to police highways passing through the reserve. Some provincial departments and rural municipalities have also proposed that they provide primary enforcement on secondary highways and be permitted to enforce traffic laws on primary highways. The amalgamation of the primary and secondary highways will affect the way that enforcement is provided on those roadways.

25. Should traffic enforcement and safety be coordinated more closely under one government department?

26. Who should be responsible for policing primary and secondary highways passing through a municipality or a First Nation that provides for its own policing?

27. Should a supplementary level of law enforcement (e.g. special constables) be established to enforce traffic laws? How can these be effectively and efficiently integrated into policing agencies and programs?

Presently, First Nations Policing is done by exempting the First Nations under section 5 of the Act and establishing a police service by means of a tri-partite policing agreement between Alberta, Canada and the First Nation. Once a police service is established, police officers are appointed by the province as special constables on request from the local police commission.

28. Should First Nations Policing be governed by specific legislation within the Act or is the current system of tri-partite policing agreements appropriate?

Governing the Police

The present legislation makes the chief of police responsible for the day-to-day operation of the police service. The municipal police commission is responsible for general supervision of the police service and of the chief of police. This insulates police from the political forum of the municipal council.

29. Is the division of authority, powers and responsibilities between the commission and the chief of police clear? If not, how can this be clarified?

Concerns have been raised about the distribution of powers between the commission and the municipal council, or at least the clarity of the Act in this matter.

30. Is the division of powers between the municipal council and the police commission appropriate? If not, how should it be changed?

31. Is the division of authority and powers between the municipal council and the police commission clear? If not, how can it be clarified?

The makeup of the police commission has also been raised as an issue. It has been suggested that the Act should specify a minimum of three-year appointments for commission members. Concern has been expressed that one-year appointment of commission members allows too much control by council and that short terms do not allow commission members to develop expertise.

32. What is an appropriate minimum term for police commission membership?

It has also been suggested that the province should play a greater role in overseeing local policing by appointing all or some of the local commission members. This is the practice in several other provinces. Another option is to have a representative of Alberta Justice sitting on each police commission as a member or advisor.

33. Should the province take a more direct and active role in governing police? If so, how much direct control should the province exercise?

34. Should the province play a role in the local police commission? If so, how?

35. Should the province appoint some or all members to the local police commission?

Accountability of Police

Complaint Handling

The current legislation makes the chief of police responsible for investigating and dealing with public complaints. In the case of complaints concerning officer conduct, the chief's findings are subject to appeal to and review by the Law Enforcement Review Board. In the case of complaints concerning police service or policies, the chief's decision is subject to appeal to the police commission. The Act requires the chief of police to investigate all complaints and respond in writing to the complainant. If it appears from the investigation that an officer breached the code of conduct, a disciplinary hearing must be held although, if the breach is minor, the chief may dismiss the matter.

Concern has been expressed that the legislated requirements for handling public complaints are too structured and rigid. It has been suggested that the legislation require, or at least encourage, informal resolution of complaints and that the chief of police be allowed to cull frivolous complaints (those that are obviously of a nuisance nature or from a chronic complainant). It has also been proposed that there should be a time limit on filing complaints. Limits from six months to two years have been put forward.

36. Should informal resolution of complaints be included in the Act? If so, should it be simply allowed or should it be required before proceeding formally?

37. Should the chief of police be allowed to summarily dismiss frivolous or vexatious complaints without a full investigation? If so, should there be an appeal mechanism? If so, what type of mechanism?

38. Should there be a time limit on the filing of complaints? If so, what should the limit be? Should there be an appeal mechanism? If so, what type of mechanism?

When a complaint is received concerning the chief of police, the commission requests the Minister of Justice to provide an investigator from another police service. Present legislation requires the minister to provide an investigator from an Alberta police service. It has been proposed that the minister be allowed to appoint or request an investigator from any police service in Canada. The question has also been raised as to who is responsible for the costs of such an investigation: the province, the municipality, or the local police service.

39. Should the Minister of Justice be allowed to request an investigator from a police service outside of Alberta to investigate a complaint concerning a chief of police?

40. Who should be financially responsible for an investigation into a complaint concerning a chief of police: the local municipality or the province?

Appeals and Disciplinary Hearing Processes

The Act, along with the *Police Service Regulation*, specifies a disciplinary process that parallels criminal court processes. It has been suggested that this is unnecessarily complicated and that the application of "rules of evidence" is too rigid. Using the less formal "principles of natural justice" would simplify the disciplinary and appeal process. Going a step further, it has been proposed that disciplinary procedures should be the responsibility of the employer and need not be regulated, other than for a statement of principles and an appeal process.

41. Should the less formal "principles of natural justice" be applied to disciplinary hearings and appeals to the Law Enforcement Review Board, instead of "rules of evidence"? Sections 20(1)(h) and 47(1)(f)

42. Should police commissions and police services, as the employer, be allowed to establish their own disciplinary procedures? If so, should it be subject to collective bargaining?

In virtually every occupation and profession, employees are expected to account to their employer for their on-the-job activities. The *Police Service Regulation* does not require a police

officer to provide an explanation when a complaint is being investigated. Some hold that this interferes with the ability of the chief of police, the employer, to adequately investigate a complaint and to manage the police service. Others hold that police officers operate in a unique environment of criminal law and should have the same rights to remain silent as a person facing investigation into criminal matters.

43. Should police officers be required to provide an explanatory statement during an investigation into a complaint? If so, what controls should be placed on the statement to ensure a police officer's rights are respected and that such statements will not open the officer to civil liability?

Law Enforcement Review Board

The role and powers of the Law Enforcement Review Board has been raised as an issue. It has been suggested that the board's powers may be too broad, particularly the clause allowing the board to "...take any other action that the board considers proper in the circumstances" (Section 20(2)). On the other hand, increased role and powers have been advocated by some, including:

- The board should monitor the investigation and findings of all public complaints made to police and should have the power to take over any investigation where it sees fit.
- The board should investigate all public complaints concerning police.

44. Are the Law Enforcement Review Board's powers and role appropriate? If not, how should they be changed? Would this require changes in the role and responsibilities of the chief of police?

Prior to the 1988 *Police Act*, the chairman of the then Law Enforcement Appeal Board was required to be a member of the judiciary. Currently, the chair must be a member of the Law Society. It has been proposed that we return to having a member of the judiciary as chair of the board.

45. What credentials should the Law Enforcement Review Board chairman have?

Police Officers

Police officers hold a unique and vital role in Canadian society. As representatives of the Crown, they have extensive authority and powers over citizens including arrest, use of force and use of deadly force. Because of this, police officers are subject to greater scrutiny and control, both on and off the job, than virtually any other profession or occupation.

The *Police Officers Collective Bargaining Act* allows police officers to form associations for the purpose of collective bargaining. Recent events in other provinces have raised the issue of what role these associations should play beyond collective bargaining. It has been suggested that police officer associations be prohibited from involvement in partisan politics including fund raising for political purposes.

46. What role should police officers' associations play? Should they be restricted to collective bargaining issues only?

47. Should associations be allowed to raise funds publicly? If so, for what purposes?

48. Should police officers, individually or collectively, be restricted from political involvement or activism? If so, how?

49. How can restricting police officers' activities be balanced with their individual rights?

Section 37 of the *Police Act* allows the commission to lay off police officers for non-disciplinary reasons, subject to any process specified in collective agreements. This was originally included in the Act to allow for general cutbacks due to budget reductions. It has been suggested that this be removed because it is too broad and gives too much power to the commission.

50. Should the police commission have the power to lay off police officers for non-disciplinary reasons? If not, how should they deal with budget reductions or freezes?

51. Is the current section 37 clear? How can it be clarified?

Section 38 of the *Police Act* lists police officer duties, responsibilities and jurisdiction. With the recent emphasis on restorative justice and focus on victims, it has been suggested that support of

victims be added to police officer duties. Some have commented that police do this routinely in any case and that making it a formal, legislated requirement may create confusion of priorities in duties.

52. Should "assisting victims of crime" be added to the duties of police officers?

Some concern has been expressed about police officers being hired to provide security at private locations or privately sponsored events such as concerts, hockey games, etc. The concern is that this is properly a job for private security and is not appropriate for a person with the extensive authority of a police officer. Some see a potential conflict between a police officer's primary loyalty to the law and the Crown, and the private interests of the person hiring them.

53. Is it appropriate for police officers to be hired by individuals, agencies, or companies for specific private or quasi-private purposes?

Special Constables

Special constables are appointed by the province at the request of a variety of public employers such as other government departments and municipalities. These constables are given very specific law enforcement authority to perform widely varying duties and roles. Because of the wide variety of duties and roles, a description of special constables has been included in Appendix A.

It has been suggested that this supplementary level of law enforcement and police support is a cost-effective alternative to fully-fledged police officers, and that their role and authority should be expanded. For example, auxiliary police officers could be appointed as special constables with specific authority and duties. A particularly contentious issue is whether special constables should be allowed to carry handguns and/or other prohibited or restricted weapons.

54. What roles should special constables play in law enforcement?

55. What powers and authorities should special constables be given?

Do You Have any Other Issues and Suggestions?

The preceding discussion and questions stem from issues that have been previously raised by *Police Act* stakeholders. There likely are a number of other police legislation issues that have not yet been raised. We would very much like to hear any other suggestions you may have for changes to the Act. Please try to be as complete as possible in making any suggestions.

Appendix A

Special Constables

What are special constables?

Special constables are peace officers with specific and usually limited law enforcement authority who are appointed by the Minister of Justice pursuant to the *Police Act*.

Who employs special constables?

Special Constables are primarily employed by various municipal, provincial and federal government agencies, including police services. Certain non-governmental agencies, such as the SPCA, may employ them for provincially mandated purposes. Private companies are not authorized to employ special constables.

What do special constables do?

Municipal governments frequently obtain special constable appointments for their by-law enforcement officers to allow them to enforce certain provincial statutes, usually specific *Highway Traffic Act* offences, but often other statutes such as the liquor provisions of the *Gaming and Liquor Act*, the *Motor Transport Act* or the *Motor Vehicle Administration Act*. Other municipally employed special constables are very specialized, such as taxi commission inspectors.

Police services employ special constables for a variety of specialized roles such as swearing court documents, handling restricted exhibits such as drugs, guarding prisoners, operating photo radar, or acting as a firearms registrar. As well, special constable appointments are used to provide specific authority for auxiliary constables.

Federal and provincial government agencies use special constable appointments to facilitate or enhance the enforcement capabilities of a variety of staff. Examples are granting student loans officers and Racing Commission investigators the power to enforce fraud provisions of the *Criminal Code*. Conservation Officers are given authority to enforce certain motor vehicle legislation while performing their regular duties.

The SPCA is the main non-governmental agency that employs special constables. These constables enforce the *Animal Protection Act* and also monitor livestock transport within the province. Another example of non-governmental agencies is the Real Estate Council that employs special constables to serve and execute documents related to the *Real Estate Act*.

What are the requirements for special constables?

- An agency wishing to employ special constables must obtain an authorization from Alberta Justice. To obtain this the employer must justify the law enforcement need for the special constables and ensure that it is in keeping with provincial enforcement direction. The agency must also have procedures in place for handling complaints and discipline and a code of conduct for special constables.

- Authorized employers may submit applications for individual special constables who are Canadian citizens and are free of criminal convictions (there are some exceptions.) They must also meet training or experience requirements commensurate with their duties and authority.

Special Constables – Appointment Process

The authorization of employers of special constables and the appointment of special constables is governed by section 42 of the *Police Act*, the *Special Constable Regulation* and the *Special Constable Equipment Regulation*. The process is as follows:

1. A prospective employer of special constables, for example a municipality or branch of the provincial government, will make an application to the Assistant Deputy Minister of the Public Security Division of Alberta Justice to be authorized to employ special constables. The minister has formally delegated his responsibilities for special constables to the Assistant Deputy Minister of the Public Security Division.

2. The prospective employer will complete the application for Authorization to Employ Special Constables, pursuant to section 3 of the *Special Constable Regulation*.

3. The employer will outline the law enforcement requirements that justify the need to be authorized to employ special constables, the specific statutes that are to be enforced by the special constables and the geographic area where the special constables will be working. These specifics are required so that an Authorization to Employ Special Constables can be provided to the employer that states the authority, responsibility and jurisdiction of the special constables, pursuant to section 3(3) of the *Special Constable Regulation*.

4. In accordance with section 2(b) of the *Special Constable Regulation*, the minister must be satisfied that the circumstances are such that there is a need for a special constable to provide the services of a peace officer in the particular circumstances.

5. The employer must include with the application, a code of conduct for special constables, process for handling public complaints and a process for the administration of discipline, as required by section 3(3) of the *Special Constable Regulation*.

6. An authorized employer of special constables will submit applications for special constable appointments to the Public Security Division, on behalf of the candidates they have employed.

7. Section 42 of the *Police Act* provides that the minister **may** appoint a person as a special constable, subject to the regulations.

8. Sections 2(b)(iv) and 2(c) of the *Special Constable Regulation* provide the eligibility criteria to be appointed as a special constable. Of particular note is section 2(iv)(B) that states "a special constable is qualified to carry out the services required of the special constable".

9. Special constables are peace officers pursuant to section 42(9) of the *Police Act*. Generally, special constables are interacting with the public in enforcement matters, have powers of arrest, etc.

10. The Public Security Division has taken the position that the training of special constables is extremely important to them being qualified to carry out their duties as special constables and the credibility of special constables within the policing community and the criminal justice system in the province. Special constables, employers of special constables, and the police support this position.

11. The Division has established minimum training standards. For special constables who have provincial statute enforcement authority, this includes completion of a post-secondary diploma or certificate in police science, law enforcement or like discipline, or law enforcement/policing experience or a combination of education and policing/law enforcement experience. Experience must be recent, within the previous five years, as the justice system is dynamic.

12. For special constables such as First Nations police officers, they must successfully complete Police Officer Recruit Training and Recruit Field Training before being granted full police officer authority.

13. It is important to note that an individual cannot hold a Special Constable Appointment if that individual is not employed by an authorized employer of special constables, reference section 2(a) of the *Special Constable Regulation*.

Appendix B
Policing in Alberta – Fact Sheet

- In Alberta there is one police officer for every 560 Albertans.
- There are eight independent municipal police services overseen by their own police commissions (Calgary, Edmonton, Lacombe, Camrose, Taber, Coaldale, Lethbridge, Medicine Hat).
- There are approximately 2,600 police officers employed by independent municipal police services.
- There are nine First Nation police services overseen by their own police commissions that police 19 First Nation reserves.
- The First Nation police services employ about 80 police officers.
- The RCMP police 63 towns and cities under direct contract with those municipalities.
- There are approximately 670 RCMP officers contracted by municipalities.
- Municipalities spend an average of 11% of their total budget on policing.
- The Provincial RCMP police the remainder of Alberta operating from 106 detachments.
- There are just under 1,000 Provincial RCMP officers.
- Eleven rural municipalities have contracted with the province for enhanced policing services; that is, extra police officers over and above the Provincial Policing contingent.
- The Provincial Policing Service Agreement costs Alberta $80 million annually.
- The Law Enforcement Review Board dealt with 43 appeals from citizens and police officers in 1999.
- The RCMP Public Complaints Commission dealt with 29 Requests for Review in 1999 in Alberta.
- About 2,500 special constables are employed by 117 municipalities, 22 federal and provincial government departments and agencies, 22 First Nations, and 98 RCMP detachments.
- The are over 6,500 licensed security guards and almost 900 licensed private investigators in Alberta.

Appendix C
Discussion Paper Questions

1. Is the present system of delegated responsibility to cities and towns over 2500 population effective and equitable?

2. Should regional police services be encouraged?

3. Should there be one police service for the province, administered by the province (i.e. a provincial service)?

4. How much control should the province exert over municipal, regional, First Nations police and their police commissions?

5. How should the province exert control? What role should the Director of Law Enforcement, and the Law Enforcement Review Board play? Is there a role for a provincial police commission?

6. Should a single entity or department be responsible for all law enforcement responsibilities including traffic enforcement, specialized enforcement and police assistance grants?

7. How can the varying "non-enforcement" demands on police be effectively and efficiently managed?

8. Is the present system of police commissions, public complaint handling, and review by the Law Enforcement Review Board working in the public interest?

9. How can police be held accountable to the public without impairing their essential independence from political interference?

10. Is the present amount of control exerted by the provincial government (or the municipal governments) over police operations and investigations appropriate?

11. Should the provincial government or police commissions be more involved in setting operational procedures for police; for example, defining conditions allowing for the use of deadly force?

12. Are police commissions, as they are presently structured, appointed, and trained, able to provide adequate general supervision of police?

13. Is the current system of volunteer, part-time police commission members appropriate for generally supervising large metropolitan police services?

14. What alternative or innovative methods might be available to enhance effective and efficient law enforcement and to provide for "safe communities"?

15. Where and how can special constables, cadets, auxiliaries, and volunteers play a role?

16. Does the private security industry have a role in law enforcement and public safety? If so, how can potential conflicts of interest, accountability and standards of competency be addressed?

17. How can police services increase efficiency?

18. How can financial responsibility for policing be made more equitable?

19. Should the municipality and/or police be allowed to generate and keep fine revenues?

20. How seriously would independent fund raising by police services or police officer associations interfere with the requisite neutrality and objectivity of police?

21. Is the contractual relationship with Canada for RCMP services working in Alberta's best interests? What issues should be brought forward when contract negotiations commence as we approach 2012?

22. Should the province exert more control or influence over the RCMP? In what areas and how?

23. Should counties and municipal districts continue to be policed by the province or should they provide their own policing?

24. Should there be a population threshold where a municipality must provide its own policing? If so, what should the threshold be? Is there an alternative to using population (such as total property assessment)?

25. Should traffic enforcement and safety be coordinated more closely under one government department?

26. Who should be responsible for policing primary and secondary highways passing through a municipality or a First Nation that provides for its own policing?

27. Should a supplementary level of law enforcement (e.g. special constables) be established to enforce traffic laws? How can these be effectively and efficiently integrated into policing agencies and programs?

28. Should First Nations Policing be governed by specific legislation within the Act or is the current system of tri-partite policing agreements appropriate?

29. Is the division of authority, powers and responsibilities between the commission and the chief of police clear? If not, how can this be clarified?

30. Is the division of powers between the municipal council and the police commission appropriate? If not, how should it be changed?

31. Is the division of authority and powers between the municipal council and the police commission clear? If not, how can it be clarified?

32. What is an appropriate minimum term for police commission membership?

33. Should the province take a more direct and active role in governing police? If so, how much direct control should the province exercise?

34. Should the province play a role in the local police commission? If so, how?

35. Should the province appoint some or all members to the local police commission?

36. Should informal resolution of complaints be included in the Act? If so, should it be simply allowed or should it be required before proceeding formally?

37. Should the chief of police be allowed to summarily dismiss frivolous or vexatious complaints without a full investigation? If so, should there be an appeal mechanism? If so, what type of mechanism?

38. Should there be a time limit on the filing of complaints? If so, what should the limit be? Should there be an appeal mechanism? If so, what type of mechanism?

39. Should the Minister of Justice be allowed to request an investigator from a police service outside of Alberta to investigate a complaint concerning a chief of police?

40. Who should be financially responsible for an investigation into a complaint concerning a chief of police: the local municipality or the province?

41. Should the less formal "principles of natural justice" be applied to disciplinary hearings and appeals to the Law Enforcement Review Board, instead of "rules of evidence"? Sections 20(1)(h) and 47(1)(f)

42. Should police commissions and police services, as the employer, be allowed to establish their own disciplinary procedures? If so, should it be subject to collective bargaining?

43. Should police officers be required to provide an explanatory statement during an investigation into a complaint? If so, what controls should be placed on the statement to ensure a police officer's rights are respected and that such statements will not open the officer to civil liability?

44. Are the Law Enforcement Review Board's powers and role appropriate? If not, how should they be changed? Would this require changes in the role and responsibilities of the chief of police?

45. What credentials should the Law Enforcement Review Board chairman have?

46. What role should police officers' associations play? Should they be restricted to collective bargaining issues only?

47. Should associations be allowed to raise funds publicly? If so, for what purposes?

48. Should police officers, individually or collectively, be restricted from political involvement or activism? If so, how?

49. How can restricting police officers' activities be balanced with their individual rights?

50. Should the police commission have the power to lay off police officers for non-disciplinary reasons? If not, how should they deal with budget reductions or freezes?

51. Is the current section 37 clear? How can it be clarified?

52. Should "assisting victims of crime" be added to the duties of police officers?

53. Is it appropriate for police officers to be hired by individuals, agencies, or companies for specific private or quasi-private purposes?

54. What roles should special constables play in law enforcement?

55. What powers and authorities should special constables be given?